UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
The Honorable Judge Sidney Brooks

In re:	)	
	)	
CHARLES ALLEN ARNOLD	)	No. 07-18751 SBB
Debtor	)	
	)	Chapter 7
In re:	)	
QUANTIC RESEARCH SYSTEMS	)	
Debtor	)	
_____	)	No. 07-18784-SBB
	)	
JOHN R. ARNOLD and	)	Chapter 11
SOIL ENHANCEMENT TECHNOLOGIES, LLC.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary Proceeding
	)	No. 07-1554 SBB
CHARLES A. ARNOLD, QUANTIC RESEARCH SYSTEMS, INC., C.A. ARNOLD AND ASSOCIATES, INC. HENDRICKS HOLDING COMPANY, Inc., and PULSEWAVE, LLC.	)	
	)	
Defendants.	)	

ORDER ON MOTION FOR DISPOSITIVE RELIEF (DOCKET #205)

THIS MATTER comes before the Court for consideration of the Motion for Dispositive Relief - the Validity of the Lien of Hendricks Holding Company upon a Finding of a Void *ab Initio* Transfer of Intellectual Property - filed by plaintiffs, John Arnold and Soil Enhancement Technologies LLC ("SET") on March 20, 2010 (Docket #205), with no timely Response thereto filed by Defendant, Hendricks Holding Company (Defendant "HHC") within the requisite 14-day period.[1] The primary question posed is whether HHC may under any circumstance assert that it has a valid lien as against property claimed to be owned by Debtors Chuck Arnold and Quantic Research Systems, Inc. ("Quantic") if the transfer of that property to Quantic is found to

[1] Defendant HHC filed an Unopposed Motion for Extension fo Time to File Response to Motion for Dispositive Relief - Validity of Lien of Hendricks Holding Company Upon a Finding of a Void Ab Initio Transfer of Intellectual Property on April 9, 2010. This Motion was tardy and is not of substantial assistance in the adjudication of the within Motion.

have been void *ab initio*. Secondarily, the Plaintiffs request that this Court make a finding that the transfer to Quantic of the so-called "Process patents," which were the subject matter at issue in this Court's March 19, 2010 Order, was void *ab initio*.

I. Background Facts

The following facts are not in dispute. On August 9, 2007, Charles A. Arnold ("Chuck Arnold") and Quantic filed a petition for bankruptcy in this Court. On September 14, 2007, Chuck Arnold and Quantic (collectively, the "Debtors") filed an adversary complaint against PulseWave, William Wetmore and James P. Yates. Debtors' adversary complaint asserted a number of causes of action, including a claim for declaratory relief in which Debtors sought a declaratory judgment that Quantic was the legal owner of five patents, referred to herein as the "PulseWave patents." PulseWave and Wetmore filed an answer and counterclaims, including a counterclaim seeking a declaratory judgment that PulseWave is the equitable owner of the very same patents Debtors identified in their claim for declaratory relief. PulseWave sought a declaration that it was the equitable owner of these patents, or, in the alternative, the exclusive licensee of certain patents and the owner of other patents.

Separately of this, another adversary proceeding was initiated, captioned *John Arnold and Soil Enhancement Technologies, LLC v. Charles Arnold, Quantic, et al.*, Adversary ("SET adversary proceeding"). In this SET proceeding, Plaintiffs John A. Arnold and Soil Enhancement Technologies, LLC ("SET") sought, among other things, declaratory relief against Chuck Arnold and Quantic that three different patents (referred to hereinafter as the "Process patents") had been improperly assigned by Chuck Arnold to Quantic, and were instead the property of SET. (All eight of the patents at issue were assigned to Quantic by Chuck Arnold during the year 2005.)

Defendant HHC interposed a counterclaim for declaratory judgment, seeking a declaration that HHC was a first-position secured creditor of Quantic. HHC thus claimed collateral ownership of both the Process patents and the PulseWave patents as a consequence of a series of loans made by HHC to Quantic in 2005 and 2006.

The Court, upon motion of HHC and over the objection of John Arnold and SET, consolidated the trials of the declaratory judgment adversary proceedings for PulseWave and SET pursuant to Fed. R. Bankr. P. 7042 and Fed. R. Civ.P. 42(a)(1). Trial was scheduled for July 14-17, 2008. HHC filed a trial brief in the matter, objected to various exhibits that the parties had endorsed, submitted exhibits and direct testimony for trial, and joined in a joint pretrial statement filed by the parties on June 20, 2008.

Three days prior to trial, on July 11, 2008, John Arnold, SET, and HHC entered into a stipulation seeking to permit HHC to be excused from trial as a consequence of the unavailability of a witness, John Isaac. The Court approved the stipulation. On the first day of trial, counsel for HHC appeared and requested to be excused per the stipulation, which the Court granted.

On November 10, 2008, the Court issued its findings of fact and conclusions of law related to the July trial. In relevant part, the Court found that its conclusions were "limited to the PulseWave adversary proceeding," that Chuck Arnold had no contractual authority to transfer the intellectual property of PulseWave to Quantic, that the PulseWave intellectual property assignments were in violation of the Colorado Limited Liability Company Act, and that the PulseWave transfers were *ultra vires* transactions that were void *ab initio*. Thus this Court concluded that the PulseWave patent transfers were both void and voidable.

The November 10 order also indicated that a continued trial would be scheduled for a single day in January 2010 to resolve matters not addressed in the July 2008 proceeding. Quantic and Chuck Arnold appealed the ruling of this Court, but withdrew their appeal. HHC did not appeal the ruling. At a pre-trial conference on December 15, 2009, HHC for the first time raised the issue of whether certain components of the earlier entered judgment were binding on HHC and asserted that the one day allotted for trial would not be sufficient to resolve remaining issues.

In a February 2010 motion, the Plaintiffs requested that HHC be estopped from litigating the question of whether Chuck Arnold's transfer of the Process patents is - or is not - void. In a March 19, 2010 Order, this Court denied that request, finding that the issue of the validity of the Process patents had not been precluded by the prior PulseWave patent litigation.

II. Standards

In this case, HHC has failed to respond to SET's motion within the allotted time for response. A "party's failure to file a response to a summary judgment motion is not, by itself, a sufficient basis on which to enter judgment against the party."[2] Even when, as here, a summary judgment motion is unopposed, the Court remains obligated to determine if the summary judgment motion is properly "supported" pursuant to Federal Rule of Civil Procedure 56(c).[3]

Federal Rule of Civil Procedure 56(c) provides, in relevant part, that: "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[4] In applying this standard, this Court examines the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.[5] The movant

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[2] *Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002).

[3] *Id.* at 1194.

[4] Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056.

[5] *Schwartz v. Brotherhood of Maintenance of Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001).

bears the initial burden of establishing that summary judgment is appropriate.[6] The moving party has "both the initial burden of production on a motion for summary judgment and the burden of establishing that summary judgment is appropriate as a matter of law."[7]

"By failing to file a response within the time specified by the local rule, the nonmoving party waives the right to respond or to controvert the facts asserted in the summary judgment motion."[8] "The court should accept as true all material facts asserted and properly supported in the summary judgment motion."[9] However, summary judgment should only be granted if those facts entitle the moving party to judgment as a matter of law.[10]

III. DISCUSSION

SET requests that this Court find that if it were determined at trial that the Process patents were void *ab initio* as *ultra vires* transfers from Chuck Arnold to Quantic, then HHC, as a secured creditor of Quantic, would be deemed to have no interest in those patents. The Court agrees with this reasoning. In Colorado, the law holds that "where the judgment debtor had neither a legal nor an equitable interest in the property [against which a lien is claimed], recording a judgment does not create a lien on the property because there is no interest on which the lien could attach."[11] Other bankruptcy courts have expressly recognized that a transfer found

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[6] *Whitesel v. Sengenberger,* 222 F.3d 861, 867 (10th Cir. 2000); *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 256 (1986).

[7] *Kannady v. City of Kiowa*, 590 F.3d 1161, 2010 U.S. App. LEXIS 229, *15 (10th Cir. 2010) (quoting *Trainor v. Apollo Metal Specialties, Inc*., 318 F.3d 976, 979 (10th Cir. 2003).

[8] *Reed*, 312 F.3d at 1195.

[9] *Id.* (citing *Amaker v. Foley*, 274 F.3d 677, 681 (2d Cir. 2001); *Anchorage Assoc. v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 175-76 (3d Cir. 1990); *Livernois v. Medical Disposables, Inc.*, 837 F.2d 1018, 1022 (11th Cir. 1988)).

[10] *See id.*

[11] *Shepler v. Whalen*, 119 P.3d 1084, 1085 (Colo. 2005). The law governing patent ownership is consistent with the principle set out in *Shepler*; an assignee of a patent has no greater a set of rights than the assignor of the patent holds. U.S. Light & Heating Co. v. J.B.M, Electric CO., 194 F. 866, 867 (2d Cir. 1912); Thomas v. Tomco Acquistions, Inc., 776 F. Supp. 431, 435 (E.D. Wis. 1991).

to be void *ab initio* renders the transfer a "legal nullity."[12] The consequence of these holdings is that a transfer void *ab initio* cannot serve as the collateral for a "secured" loan.[13]

As a secondary matter, the Plaintiffs request that this Court make a finding that the transfer to Quantic of the Process patents was void *ab initio*. The Court declines to do so at this time. In this Court's March 19, 2010 order, the Court indicated that "the Defendant is not precluded from re-litigating either of these findings" - namely whether the Process patent transfers were (1) voidable or (2) void.[14] Nothing in SET's present motion suggests a valid reason why the logic of this Court's previous Order should change.

IV. CONCLUSION AND ORDER

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Dispositive Relief and Summary Judgment is GRANTED, in part, and DENIED, in part, as set forth herein.

Dated this 30th day of April, 2010.

BY THE COURT:

Sid Brooks

Sidney B. Brooks,
United States Bankruptcy Judge

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[12] *In re Wlodarski*, 115 B.R. 53, 57 (Bankr. S.D.N.Y. 1990); see also *In re Oliver*, 38 B.R. 245, 247 (Bankr. D. Minn. 1984). *Accord In re Tampa Chain Co.*, 35 B.R. 568, 578 (Bankr. S.D.N.Y. 1983) ("If an agreement is truly void, as opposed to voidable, it lacks operative legal effect. A claim based on voidable contract is a disputed claim; a claim based on a void agreement, however, lacks an operative right of payment.").

[13] Previously, HHC has cited to Colorado Revised Statutes § 38-8-109(1) and 11 U.S.C. § 548(c) to assert that even if the Chuck Arnold-to-Quantic patent transfers were deemed voidable, it would have a valid lien on the patents. Docket # 68, p. 18. 11 U.S.C. § 548(c) and C.R.S. § 38-8-109(1) refer to the right of a good faith transferee to retain an interest in a *voidable*, not a *void*, transfer. Void transfers are distinct from voidable transfers, and thus these two statutes are inapplicable for the present Motion's and Order's purposes.

[14] Docket # 201, p. 7 n.21.